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Attorneys for Defendants
MERCK & CO. INC.; MERCK SHARP &
DOHME CORP.¹; ORGANON & CO.;
and ORGANON LLP

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SHARON BLUNT, an individual

Plaintiff,

vs.

MERCK & CO., INC., a New Jersey
Corporation; MERCK SHARP &
DOHME CORP., a New Jersey
Corporation; ORGANON & CO., a
Delaware Corporation; ORGANON
LLC, a Delaware Limited Liability
Company; and DOES 1-10, Inclusive,

Defendants.

Case No.

**NOTICE OF REMOVAL AND
REMOVAL OF ACTION
PURSUANT TO 28 U.S.C. §§ 1332,
1441, and 1446**

[San Bernardino County Superior
Court Case No. CIV SB 2204634]

Action Filed: March 4, 2022
Action Removed: May 20, 2022
Trial Date: None Set

¹ Merck Sharp & Dohme Corp. is now known as Merck Sharp & Dohme LLC.

1 **TO THE COURT, ALL PARTIES AND COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that, pursuant to 28 U.S.C. §§ 1332, 1441, and
3 1446, Defendants Merck & Co., Inc., Merck Sharp & Dohme Corp., Organon & Co.
4 and Organon LLC (collectively, “Defendants”) hereby give notice that the above-
5 captioned action, pending in the Superior Court of California for the County of San
6 Bernardino, is removed to the United States District Court for the Central District of
7 California. In support of the removal, Defendants respectfully state as follows:

8 1. On March 4, 2022, Plaintiff Sharon Blunt filed a Complaint in the Superior
9 Court of California for County of San Bernardino. The case is captioned *Sharon Blunt*
10 *v. Merck & Co., Inc., et al.*, San Bernardino County Case No. CIV SB 2204634.
11 Attached to the Declaration of Julia Romano as **Exhibit 1** is a true and correct copy of
12 the state court filings Defendants obtained, including the Complaint, Summons, Civil
13 Case Cover Sheet, and Certificate of Assignment.

14 2. This case is properly removed to this Court under 28 U.S.C. § 1441
15 because Defendants have satisfied the procedural requirements for removal and this
16 Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332.²

17 3. This action is among citizens of different states: (1) Plaintiff is and was at
18 the time the Complaint was filed a citizen of California; (2) Merck & Co., Inc. is now,
19 and was at the time this action commenced, a citizen of New Jersey; (3) Merck Sharp
20 & Dohme Corp. is now, and was at the time this action commenced, a citizen of New
21 Jersey; (4) Organon & Co. is now, and was at the time this action commenced, a citizen
22 of Delaware and New Jersey; and (5) Organon LLC is now, and was at the time this
23 action commenced, a citizen of Delaware and New Jersey.

24
25 _____
26 ² Defendants file this Notice of Removal and Removal of Action without submitting
27 or consenting to the personal jurisdiction of this Court and expressly reserve the right
28 to challenge this Court’s ability to exercise personal jurisdiction over Defendants in
this case, including through a motion to dismiss for lack of personal jurisdiction under
Federal Rule of Civil Procedure 12(b)(2).

1 4. Furthermore, the alleged amount in controversy exceeds \$75,000,
2 exclusive of interest and costs, for the reasons more fully briefed below.

3 **I. PROCEDURAL REQUIREMENTS FOR REMOVAL ARE MET**

4 5. This Notice of Removal and Removal of Action is timely filed under 28
5 U.S.C. § 1446, as it is filed within 30 days of Defendants’ receipt of the initial pleading
6 purporting to set forth the claims for relief on which this action is based.

7 6. Defendants were served with a copy of the Complaint on April 20, 2022.
8 The filing of this Notice of Removal, therefore, is timely because Defendants are filing
9 it “within 30 days after receipt by the defendant, through service or otherwise, of a copy
10 of the initial pleading setting forth the claim for relief upon which such action or
11 proceeding is based.” 28 U.S.C. § 1446(b)(1).

12 7. Pursuant to 28 U.S.C. § 1446(a), Defendants attach to this Notice of
13 Removal a copy of the Complaint, Summons, Civil Case Cover Sheet and Certificate
14 of Assignment. *See* Romano Decl. ¶ 3, Ex. 1; *see also* Request for Judicial Notice
15 (“RJN”), Ex. 1.

16 8. Pursuant to 28 U.S.C. §§ 84(c), 1441(a), and 1446(a), this Notice of
17 Removal is being filed in the United States District Court for the Central District of
18 California. Venue for this action is proper in this Court under 28 U.S.C. § 1441(a)
19 because San Bernardino County is located within the United States District Court for
20 the Central District of California. *See* 28 U.S.C. § 84(c). Accordingly, the Central
21 District of California is the federal “district and division embracing the place where
22 such action is pending.” 28 U.S.C. § 1441(a).

23 9. Pursuant to 28 U.S.C. § 1446(d), Defendants are filing with the clerk of
24 the Superior Court of the State of California for the County of San Bernardino, and
25 serving upon Plaintiff’s counsel, a Notice to Adverse Party and State Court of Removal
26 of Action to Federal Court, including a true and correct copy of this Notice of Removal.
27 Proof of the same will be filed with this Court.

10. Defendants have complied with 28 U.S.C. § 1446(b)(2)(A) insofar as there are no other defendants that must join in or consent to removal. *See, e.g.*, 28 U.S.C. § 1446 (b)(2)(A) (“When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.”). The other defendants, the unknown “DOES 1-10,” are not required to join in or consent to removal. *See United Computer Sys., Inc. v. AT&T Corp.*, 298 F.3d 756, 762 (9th Cir. 2002) (noting that the “rule of unanimity” for removal does not apply to “nominal, unknown or fraudulently joined parties”); *Fristoe v. Reynolds Metals Co.*, 615 F. 2d 1209, 1213 (9th Cir. 1980) (holding that removal to federal court was proper as “the unknown defendants sued as ‘Does’ need[ed] not be joined in a removal petition”); *Cont’l Ins. Co. v. Foss Mar. Co.*, 2002 WL 31414315, at *4 (N.D. Cal. Oct. 23, 2002) (noting that “all defendants in a state action must join in the petition for removal, except for nominal, unknown, or fraudulently joined parties.”) Thus, Defendants may remove without any other parties’ concurrence.

11. No previous application has been made for the relief requested herein.

II. REMOVAL IS PROPER BECAUSE THIS COURT HAS ORIGINAL JURISDICTION PURSUANT TO 28 U.S.C. §§ 1332 AND 1441.

12. This Court has diversity jurisdiction pursuant to 28 U.S.C. § §1332, 1441 because this is a civil action among citizens of different states in which the amount in controversy exceeds the sum of \$75,000, exclusive of costs and interest.

A. There Is Complete Diversity Among the Parties

13. This case is between “citizens of different States and in which citizens or subjects of a foreign state are additional parties.” 28 U.S.C. § 1332(a)(1). As explained below, all defendants are diverse from Plaintiff.

a. Plaintiff Is A Citizen Of California

14. Plaintiff is and was at the time of filing of the Complaint, a citizen of San Bernardino County, California. Compl. ¶ 24.

b. Merck & Co., Inc. Is A Citizen of New Jersey

15. Plaintiff concedes that Merck & Co., Inc., is now, and was at the time that Plaintiff filed this action, a foreign corporation organized under the laws of the State of New Jersey with its principal place of business in New Jersey. *See* Compl. ¶ 11; Romano Decl. ¶¶ 4-5, Ex. 2, New Jersey Secretary of State Short Form Standing Certificate for Merck & Co., Inc., (stating that Merck & Co., Inc., is a domestic for-profit corporation registered within the jurisdiction of New Jersey); RJN, Ex. 2; *see also* Romano Decl. ¶¶ 6-7, Ex. 3, New Jersey Secretary of State Business Entity Status Report for Merck & Co., Inc., (stating that Merck & Co., Inc., is registered within the jurisdiction of New Jersey); RJN, Ex. 3. Thus, Merck & Co., Inc., is a citizen of New Jersey for purposes of determining diversity. 28 U.S.C. § 1332(c)(1).

c. Merck Sharp & Dohme Corp. Is A Citizen of New Jersey

16. Plaintiff concedes that Merck Sharp & Dohme Corp. is now and was at the time that Plaintiff filed this action, a foreign corporation organized under the laws of the State of New Jersey with its principal place of business in New Jersey. *See* Compl. ¶ 11; Romano Decl. ¶¶ 8-9, Ex. 4, California Secretary of State Statement of Information for Merck Sharp & Dohme Corp. (stating that Merck Sharp & Dohme Corp. is registered within the jurisdiction of New Jersey); RJN, Ex. 4. Effective May 1, 2022, Merck Sharp & Dohme Corp. merged into Merck Sharp & Dohme LLC. Romano Decl. ¶ 10. Merck Sharp & Dohme LLC is registered within the jurisdiction of New Jersey. Romano Decl. ¶¶ 11-12, Ex. 5, New Jersey Secretary of State Short Form Standing Certificate for Merck Sharp & Dohme LLC (stating that Merck Sharp & Dohme LLC is a domestic limited liability company registered within the jurisdiction of New Jersey); RJN, Ex. 5; *see also* Romano Decl. ¶¶ 13-14, Ex. 6, New Jersey Secretary of State Business Entity Status Report for Merck Sharp & Dohme LLC (stating that Merck Sharp & Dohme LLC is registered within the jurisdiction of New Jersey); RJN, Ex. 6. Thus, Merck Sharp & Dohme Corp. (now known as Merck Sharp & Dohme LLC) is a citizen of New Jersey for purposes of determining diversity. 28 U.S.C. § 1332(c)(1).

d. Organon & Co., Inc. Is A Citizen of Delaware And New Jersey

17. Plaintiff concedes that Organon & Co. is now and was at the time that Plaintiff filed this action, a foreign corporation organized under the laws of the State of Delaware with its principal place of business in New Jersey. *See* Compl. ¶ 13; Romano Decl. ¶¶ 15-16, Ex. 7, Delaware Division of Corporations Short Form Standing Certificate for Organon & Co., (stating that Organon & Co. is a domestic for-profit corporation registered within the jurisdiction of Delaware); RJN, Ex. 7; *see also* Romano Decl. ¶¶ 17-18, Ex. 8, New Jersey Secretary of State Short Form Standing Certificate for Organon & Co., (stating that Organon & Co. is a foreign for-profit corporation with its principal place of business within the jurisdiction of New Jersey); RJN, Ex. 8. Thus, Organon & Co. is a citizen of both Delaware and New Jersey for purposes of determining diversity. 28 U.S.C. § 1332(c)(1).

e. Organon LLC Is A Citizen of Delaware and New Jersey

18. Plaintiff concedes that Organon LLC is now and was at the time that Plaintiff filed this action, a foreign limited liability company organized under the laws of the State of Delaware with its principal place of business in New Jersey. *See* Compl. ¶ 13; Romano Decl. ¶¶ 19-20, Ex. 9, Delaware Division of Corporations Short Form Standing Certificate for Organon LLC (stating that Organon LLC is a domestic limited liability company registered within the jurisdiction of Delaware); RJN, Ex. 9; *see also* Romano Decl. ¶¶ 21-22, Ex. 10, New Jersey Secretary of State Short Form Standing Certificate for Organon LLC (stating that Organon LLC is a foreign for-profit limited liability company with its principal place of business within the jurisdiction of New Jersey); RJN, Ex. 10. Thus, Organon LLC is a citizen of both Delaware and New Jersey for purposes of determining diversity. 28 U.S.C. § 1332(c)(1).³

³ Organon & Co. is the member of Organon LLC. *See* Romano Decl., ¶¶ 23-24, Ex. 11, California Secretary of State Statement of Information for Organon LLC (listing Organon & Co. as membership for Organon LLC); RJN, Ex. 11. The citizenship of

f. Citizenship Of The DOE Defendants Shall Not Be Considered

19. The citizenship of the DOE defendants shall not be considered for purposes of determining diversity jurisdiction, as these are fictitious defendants. *See* 28 U.S.C. § 1441(b) (“In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.”).⁴

entities other than corporations is determined by the citizenship of their members. See *Carden v. Arkoma Assocs.*, 494 U.S. 185 (1990); *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). Because Organon & Co. is a citizen of New Jersey and Delaware, Organon LLC is therefore deemed a citizen of those two states, as well.

⁴ In the event that any DOE defendants are forum defendants, i.e., citizens of California for diversity purposes, it is not a bar to removal under 28 U.S.C. section 1441(b), which provides that removal is allowed only if “none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” 28 U.S.C. § 1441(b). Under the plain language of Section 1441(b), the no forum defendant rule applies only once such defendant has been properly joined and served. *Id.*; *see also* *Allen v. Eli Lilly & Co.*, 2010 WL 3489366, at *2 (S.D. Cal. Sept. 2, 2010) (denying motion to remand and upholding the removal of the action, finding the presence of local defendants did not preclude removal jurisdiction because no local defendant was a party to the action at the time of removal and complete diversity of the parties continues to exist after the local defendants were or are served and made parties); *Zirkin v. Shandy Media, Inc.*, 2019 WL 626138, at *2 (C.D. Cal. Feb. 14, 2019) (denying motion to remand and upholding the forum defendants’ removal before service, finding “the Forum Defendant Rule did not bar an in-state defendant from removing an action before the defendant is served”); *May v. Haas*, 2012 WL 4961235, at *3 (E.D. Cal. Oct. 16, 2012) (denying motion to remand and upholding the removal of the action, finding that the forum defendant had not been served at the time the non-forum defendant removed the case and complete diversity continues to exist between the parties after the forum defendant has been served); *Loewen v. McDonnell*, 2019 WL 2364413, at *9 (N.D. Cal. June 5, 2019) (denying motion to remand, finding the removal was effective before any forum defendant was served and complete diversity continues to exist between the parties); *id.* at *7 (holding “the Northern District of California has consistently held a defendant may remove an action prior to receiving proper service, even when the defendant resides in the state in which the plaintiff filed the state claim”); *Cucci v. Edwards*, 510 F. Supp. 2d 479, 482 (C.D. Cal. 2007) (holding that “a resident defendant who has not been served may be ignored in determining removability”); *City of Ann Arbor Employees’*

20. Based on the above, there is complete diversity among Plaintiff and Defendants, and this Court has diversity jurisdiction under 28 U.S.C. § 1332. *See Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373 (1978) (“diversity jurisdiction does not exist unless each defendant is a citizen of a different State from each plaintiff”).

B. The Amount in Controversy Exceeds \$75,000.

21. The amount in controversy exceeds \$75,000 notwithstanding that Plaintiff does not allege a specific amount in controversy in the Complaint.⁵

22. Under 28 U.S.C. § 1446(c)(2):

If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy, except that:

- (A) the notice of removal may assert the amount in controversy in the initial pleading seeks . . . (ii) a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded, and
- (B) removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specific in section 1332(a).

28 U.S.C. § 1446(c)(2)(A)-(B); Federal Courts Jurisdiction and Venue Clarification Act of 2011, Pub. L. 112-63, Dec. 7, 2011.

23. When a plaintiff does not allege a specific amount for damages, the removing defendant need only show that the amount in controversy is “more likely than not” to exceed the jurisdictional amount of \$75,000, exclusive of interest and costs. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996). Where the

Retirement Sys. v. Gecht, 2007 WL 760568, at *8 (N.D. Cal. Mar. 9, 2007) (holding that “[p]laintiff should have been cognizant of the fact that a nonresident defendant could remove a case without having been served”); *Republic W. Ins. Co. v. Int’l Ins. Co.*, 765 F. Supp. 628, 629 (N.D. Cal. 1991) (denying motion for remand where local defendant had not been served at time of removal).

⁵ Defendants deny all allegations contained in Plaintiff’s Complaint and deny that Plaintiff is entitled to any relief sought.

1 amount in controversy is not specified, courts look to the facts alleged in the complaint
 2 as well as in the notice of removal. *See Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029,
 3 1031 (N.D. Cal. 2002) (“Where the amount of damages sought by a plaintiff is unclear,
 4 defendant must prove facts supporting the jurisdictional amount by a preponderance of
 5 the evidence”); 28 U.S.C. § 1446(c)(2). Courts may receive extrinsic evidence to
 6 determine whether the amount in controversy is more likely than not to exceed \$75,000.
 7 *See Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004) (“[T]he amount-in-
 8 controversy inquiry in the removal context is not confined to the face of the
 9 complaint.”). Indeed, courts may find an estimate of damages based upon damage
 10 awards in similar cases as sufficient evidence to prove by a preponderance of the
 11 evidence that a plaintiff’s claims exceed the jurisdictional limit. *See Karlsson v. Ford*
 12 *Motor Co.*, 140 Cal. App. 4th 1202, 1207 (2006) (awarding damages in excess of the
 13 jurisdictional amount of \$75,000 in product liability case); *Jones v. John Crane, Inc.*,
 14 132 Cal. App. 4th 990, 997 (2005) (same).

15 24. While Plaintiff’s Complaint does not allege a specific amount in
 16 controversy, Plaintiff alleged that she “has sustained pecuniary loss and general
 17 damages in a sum exceeding the jurisdictional minimum of this Court.” Compl. ¶¶ 213,
 18 230; Romano Decl. ¶ 3, Ex. 1. Further, it is facially evident that the amount in
 19 controversy is satisfied. Plaintiff alleges that she took branded and/or generic Singulair
 20 (also known as Montelukast) for allergy treatment during the years 2008 through 2019
 21 pursuant to a prescription by her healthcare provider. Plaintiff alleged that, after she
 22 began taking Singulair, she “suffered neuropsychiatric injury including general anxiety
 23 and depression.” Compl. ¶ 8.

24 25. Plaintiff alleges she became symptomatic while using Singulair®. Compl.
 25 ¶ 9. Plaintiff further alleges that she “has incurred medical expenses and will continue
 26 to incur expenses in connection with medical treatment as a result of [her alleged]
 27 injuries.” Compl. ¶ 10. Plaintiff also alleges she “has endured and will continue to
 28 endure pain, suffering, mental anguish, trauma, and loss of enjoyment of life as a result

1 of these injuries, ha[s] suffered lost earnings and/or a loss of earning capacity, and other
 2 injuries and damages to be proven at trial.” Compl. ¶ 10.

3 26. Accordingly, Plaintiff asserts causes of action for: (1) Strict Liability –
 4 Design Defect; (2) Strict Liability – Failure to Warn; (3) Negligence; (4); Negligent
 5 Misrepresentation; (5) Breach of Express Warranty; and (6) Breach of Implied
 6 Warranty. Compl. ¶¶ 103-233. Plaintiff seeks to recover past and future general
 7 damages, past and future economic and special damages, loss of earnings and impaired
 8 earning capacity, medical expenses, past and future, punitive or exemplary damages,
 9 attorney’s fees, costs of suit incurred, for pre-judgment interest as provided by law, and
 10 for such other and further relief as the Court may deem just and proper. Compl. at 41:1-
 11 10.

12 27. Where, as here, a plaintiff alleges a serious psychological injury, California
 13 federal courts have found that the amount-in-controversy requirement is satisfied. *See*,
 14 *e.g.*, *Bryant v. Apotex, Inc.*, 2012 WL 5933042, at *4 (E.D. Cal. Nov. 27, 2012) (holding
 15 the amount-in-controversy requirement was met, although “complaint [did] not set forth
 16 a specific amount of damages,” because plaintiff sought “compensatory damages for
 17 injuries and severe pain lasting six months, severe emotional distress, and punitive
 18 damages”); *Campbell v. Bridgestone/Firestone, Inc.*, 2006 WL 707291, at *2-3 (E.D.
 19 Cal. Mar. 17, 2006) (holding the amount in controversy exceeded \$75,000 where
 20 plaintiffs asserted strict product liability, negligence, and breach of warranty claims and
 21 sought compensatory damages, including lost wages and loss of earning capacity,
 22 medical expenses, and general damages).

23 28. California cases also reveal that jury awards and settlements based on
 24 conditions similar to those alleged by Plaintiff may exceed the \$75,000 jurisdictional
 25 amount. *See, e.g.*, *Howard v. Doe Companies*, 2000 Jury Verdicts LEXIS 64660 (May
 26 25, 2000) (settlement for \$150,000 for ephedrine-induced psychosis, including
 27 insomnia and racing thoughts, and ultimately depression); *Snyder v. Kaiser Found.*
 28 *Hosp.*, 1997 Jury Verdicts LEXIS 91524 (Sup. Ct. San Diego Cty. June 1997) (arbitrator

1 awarded \$360,000 where plaintiff experienced hallucinations after taking prescribed
 2 medication and incurred additional physical injuries as a result); *Confidential v.*
 3 *Confidential*, 2009 Jury Verdicts LEXIS 12779 (Sup. Ct. L.A. Cty. Oct. 1994) (settled
 4 for \$150,000 for psychological problems and hallucinations resulting from Prozac
 5 prescription); *Boller v. Placer Union High Sch. Dist.*, Case No. SCV 7478, 2000 Jury
 6 Verdicts LEXIS 65056 (Sup. Ct. Auburn Cty. Apr. 14, 2001) (jury awarded \$158,750
 7 for depression, insomnia, and anxiety); *Maher v. Ideal Computer Servs., Inc.*, Case No.
 8 RG07348498, 2009 Jury Verdicts LEXIS 410244 (Sup. Ct. Alameda Cty Sept. 2009)
 9 (awarding \$86,000 for depression, anxiety and emotional distress); *Lantz Greene v.*
 10 *Yucaipa Towing Inc.*, Case No. RIC10022388, 2013 Jury Verdicts LEXIS 7608 (Sup.
 11 Ct. Riv. Cty. June 11, 2013) (awarding \$540,000 in emotional distress, lost wages, and
 12 punitive damages).

13 29. Likewise, California federal courts recognize that the amount-in-
 14 controversy requirement is satisfied in analogous product liability cases alleging
 15 continuing medical care. *See, e.g., Hammarlund v. C.R. Bard, Inc.*, 2015 WL 5826780,
 16 at *2 (C.D. Cal. Oct. 2, 2015) (holding it was “more likely than not” that the amount in
 17 controversy exceeds \$75,000, given the plaintiffs allege “severe” bodily injuries and
 18 “mental and physical pain and suffering” following the failure of defendant’s mesh
 19 implant product); *Zalta v. K2M, Inc.*, 2013 WL 12140470, at *2 (C.D. Cal. Nov. 13,
 20 2013) (finding that the defendant demonstrated, by a preponderance of the evidence,
 21 that the amount-in-controversy requirement was satisfied, given that the plaintiff sought
 22 “lost wages, hospital and medical expenses, general damages, and lost earning capacity”
 23 following the installment of a defective cervical plate); *Zachman v. Johnson & Johnson*,
 24 2015 WL 7717190 (N.D. Cal. Nov. 30, 2015) (amount-in-controversy requirement
 25 satisfied where prescription medication Levaquin allegedly caused the plaintiff’s
 26 peripheral neuropathy).

27 30. Considering the nature and extent of Plaintiff’s alleged injuries and
 28 damages, Plaintiff’s claims exceed this Court’s minimum \$75,000 jurisdictional limit.

